



1616 P Street, NW
Suite 300
Washington, DC 20036
T +202.683.2500
F +202.683.2501
foodandwaterwatch.org

January 5, 2020

FREEDOM OF INFORMATION ACT REQUEST

Submitted via <https://www.foiaonline.gov>

Freedom of Information Officer
Environmental Protection Agency, National FOIA Office
1200 Pennsylvania Avenue, NW (2310A)
Washington, DC 20460

Re: Discharge Records for Foster Farms Kelso Poultry Plant, FRS ID 110000490834

Dear FOIA Officer:

This is a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, submitted on behalf of Food & Water Watch. This request seeks records regarding discharges regulated under the Clean Water Act by Foster Farms Kelso Poultry Plant, Facility Registry Service ID 110000490834; located at 1700 S. 13th Avenue, Kelso, Washington, 98626. The date range of this request is from January 1, 2018, to the date of fulfillment of this request.

The requested records include, but are not necessarily limited to, the following records regarding Foster Farms' facility located at 1700 S. 13th Avenue, Kelso, Washington, 98626:

- Any records indicating discharges of a pollutant or pollutants to waters of the U.S.;
- All Discharge Monitoring Reports submitted to or acquired by EPA;
- Any correspondences between EPA and Foster Farms or the state of Illinois regarding discharges from the above-referenced facility (including correspondences with any parent or subsidiary business entity related to Foster Farms);
- Any initiated, pending, and/or completed Clean Water Act enforcement actions against the above-referenced facility.

This request applies to all such records in any form, including (without limit) correspondence sent or received, memoranda, notes, telephone conversation notes, maps, analyses, agreements, email messages, and electronic files. It also covers any non-identical duplicates of records that by reason of notation, attachment, or other alteration or supplement, include any information not contained in the original record. Additionally, this request is not meant to be exclusive of other records that, though not specifically requested, would have a reasonable relationship to the subject matter of this request.

We emphasize that this request applies to all described documents the disclosure

of which is not expressly prohibited by law. If you should seek to prevent disclosure of any of the requested records, we request that you: (1) identify each such document with particularity (including title, subject, date, author, recipient, and parties copied); (2) explain in full the basis on which nondisclosure is sought; and (3) provide us with any segregable portions of the records for which you do not claim a specific exemption.

Interest of Requester

Food & Water Watch (“FWW”) is a national, nonprofit membership organization that mobilizes regular people to build political power to move bold and uncompromised solutions to the most pressing food, water, and climate problems of our time. FWW uses grassroots organizing, media outreach, public education, research, policy analysis, and litigation to protect people’s health, communities, and democracy from the growing destructive power of the most powerful economic interests. One of FWW’s specific focus areas is pollution caused by factory farming, including slaughter and rendering facilities, and whether government regulators are meeting their mandates under the Clean Water Act with respect to such facilities.

Request for Responsive Documents in Electronic Form

To the extent possible, FWW requests that EPA provide any responsive documents to this request in electronic form. For such electronic documents, please deliver them by email or electronic storage device to the contact information provided below.

Fee Waiver Request

FWW requests that you waive any applicable fees for this request because disclosure is clearly in the public interest, and FWW has no commercial interests that could outweigh that public interest. As described below, disclosure of these requested records “is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); see 40 C.F.R. § 2.107(l)(1). FOIA carries a presumption of disclosure, and the fee waiver was designed specifically to allow nonprofit, public interest groups, such as FWW, access to government documents without the payment of fees. The courts have determined that the statute “is to be liberally construed in favor of waivers for noncommercial requesters.” See *Judicial Watch v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (stating “that Congress amended FOIA to ensure that it is ‘liberally construed in favor of waivers for noncommercial requesters’”). As explained below, FWW meets the test for a fee waiver established in FOIA and outlined in the EPA’s implementing regulations, 40 C.F.R. § 2.107(l).

I. Disclosure of This Information Is in the Public Interest because It Will Significantly Contribute to Public Understanding of the Operations or Activities of the Government

FWW qualifies for the fee waiver because the requested information will

significantly contribute to public understanding of Federal government operations or activities. See 40 C.F.R. § 2.107(l)(1)-(2). FWW, a leading environmental and food safety organization that is recognized as an advocate for stronger oversight of factory farming practices, possesses the ability to analyze and disseminate the requested information to the general public. EPA and states are tasked with implementation and enforcement of the Clean Water Act against slaughter facilities such as the one that is the subject of this request. The public will benefit from understanding the recent compliance history of this facility and what actions have or have not been taken by EPA in response to any violations of the Clean Water Act. This is precisely the type of information that FWW is well positioned to analyze and disseminate to our members and the general public.

A. The subject matter of the requested documents concerns operations or activities of the Federal government

FWW seeks public records related to EPA's implementation and enforcement of the Clean Water Act's NPDES permitting program. EPA is responsible for ensuring that the goal of the Act—the elimination of discharges of pollutants into waters of the U.S.—is continuously pursued until met. Slaughter facilities have a history of significant discharges, including discharges that violate their respective NPDES permit conditions. The requested records will indicate whether any such violations have occurred recently at this facility, and what actions EPA has taken in response. As such, the information requested clearly “concerns the ‘operations and activities of the government.’” 40 C.F.R. § 2.107(l)(2)(i).

B. The disclosure is likely to contribute significantly to public understanding of Federal government operations or activities

Disclosure is “‘likely to contribute’ to an understanding of government operations or activities,” 40 C.F.R. § 2.107(l)(2)(ii), by contributing to the public's understanding of how EPA is protecting waters of the U.S. under the Clean Water Act with respect to this NPDES-permitted slaughter facility. Information already publicly available indicates that this facility has a history of permit violations, but the full scope of these violations and EPA's action in response are not clear or publicly available. Further, what information is already publicly available on these subjects is not easy to find or understand by members of the public not versed in EPA operations and regulation of slaughter facilities under the Clean Water Act. Therefore, disclosure of the requested records is likely to contribute to “an increased public understanding” of EPA operations and activities to a “significant extent.” See 40 C.F.R. § 2.107(l)(2)(ii), (iv).

After obtaining and analyzing the records provided, FWW will use its knowledge and expertise to inform its members and the public regarding EPA's oversight of this facility and its compliance with the Clean Water Act, as well as the possible environmental harm being caused by this facility. FWW has “expertise in the subject area [of this request] and [the] ability and intention to effectively convey information to the public.” See 40 C.F.R. § 2.107(l)(2)(iii). FWW's consistent contribution to public

understanding of federal agency activities that affect the environment, as compared to the level of public understanding prior to disclosure, is well established. In determining whether the disclosure of requested information will contribute significantly to public understanding, a guiding test is “whether the requester will disseminate the disclosed records to a reasonably broad audience of persons interested in the subject.” *Carney v. U.S. Dept. of Justice*, 19 F.3d 807, 815 (2d Cir. 1994). FWW is a membership organization with a staff of over 100, including researchers, organizers, attorneys, and communications professionals. Food & Water Watch has scientific and legal expertise and our staff regularly write, speak, and advocate on environmental issues.

FWW has a demonstrated record of garnering significant media attention for our work related to water pollution and the government’s oversight of polluting facilities. We are uniquely qualified to analyze the information requested, present it in an easy to understand manner, and disseminate it to a large cross-section of the general population, such that the disclosure will “contribute to ‘public understanding.’” 40 C.F.R. § 2.107(l)(2)(iii). FWW has the ability to disseminate information of this type via a broad array of diverse and highly effective channels, including FWW’s website, press releases, blog posts, presentations, and correspondences to our membership. FWW also has the ability to share any information received from this request with partner organizations that cumulatively have millions of members nationwide. Given FWW’s expertise and ability to contribute to public understanding through various channels, FWW could “contribute significantly” to public understanding of how this facility is regulated by EPA under the Clean Water Act and whether the facility is being allowed to operate in such a way that risks harm to communities and the environment. See 40 C.F.R. § 2.107(l)(2)(iii)-(iv).

II. Food & Water Watch Has No Commercial Interest in Obtaining the Information Requested

The second element of the fee waiver analysis addresses the requester’s “commercial interest” in the information. Two questions must be addressed when determining whether a fee waiver is appropriate in light of the requester’s commercial interests in the information requested. 40 C.F.R. § 2.107(l)(3). The first question is “[w]hether the requester has a commercial interest that would be furthered by the requested disclosure.” 40 C.F.R. § 2.107(l)(3)(i). Here, as a 501(c)(3) nonprofit entity, FWW has no commercial, trade, or profit interest in the material requested. FWW would not be paid for, or receive other commercial benefits from the publication or dissemination of the material requested. The requested material would be disseminated solely for the purposes of educating the public and ensuring robust enforcement of the Clean Water Act to protect the environment, and would not be used for commercial gain.

The second factor hinges on the primary interest in the disclosure. 40 C.F.R. § 2.107(l)(3)(ii). Clearly, there is public interest in the release of the materials sought and FWW’s analysis of these records because they will allow for a more thorough understanding of EPA’s enforcement of the NPDES permitting program and this facility’s potential to cause environmental harm as allowed by EPA and state regulators. Thus, even if FWW did have some “commercial” interest in the requested records, a

complete fee waiver would still be appropriate because FWW's primary interest in the material is to inform the public about the operations and activities of the government regarding a matter of public interest (*i.e.*, whether and how the government is protecting waters of the U.S. from this facility's pollution). Therefore, this is a situation where the "public interest is greater in magnitude than that of any identified commercial interest in disclosure." *Id.* The "disclosure of the information . . . is not primarily in the commercial interest of" FWW, and a fee waiver is appropriate. 5 U.S.C. § 552(a)(4)(A)(iii).

Conclusion

Accordingly, based on the above analysis, the requested records will contribute significantly to a broad public understanding of this facility's pollution as regulated by the Clean Water Act and EPA's oversight of that pollution, and will not serve any commercial interest on the part of FWW. Under these circumstances, FWW fully satisfies the criteria for a fee waiver. If for some reason the fee waiver is denied, please contact me before incurring any costs related to this request. If the fee waiver is not granted and costs are incurred prior to contacting me, FWW will not be responsible for any costs. FWW reserves the right to appeal any decision to deny the fee waiver request in this matter.

If you have any questions or if you require further information to identify the requested records or rule on the fee waiver request, please contact me at (208) 209-3569 or tlobdell@fwwatch.org. Additionally, if you are not the proper recipient of this request, please identify which office has information responsive to this request.

Thank you in advance for your prompt reply.

Sincerely,

A handwritten signature in black ink, appearing to read "Tyler Lobdell".

Tyler Lobdell
Staff Attorney
Food & Water Watch
2009 NE Alberta St., Suite 207
Portland, OR 97211
tlobdell@fwwatch.org
(208) 209-3569